IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

CHAMBERS SUMMONS NO. 1079 OF 2004
IN
SUIT NO. 1312 OF 1980

The Cotton Corpn. of India Ltd. ... Plaintiffs

V/s

Madura Coats Ltd. ... Defendants

Mr. H.J. Thakker with U.M.Mahajan i/by Divekar & Co. for the plaintiffs.

Mr. B. Zaiwala with E. Kotwal i/by P.J. Ranga for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 26TH AUGUST, 2004.

P.C.:

1. Heard both sides.

2. This chamber summons is taken out by the plaintiffs for amendment of the plaint, more particularly, the particulars of the claim, on the ground that those were either typographical mistakes or mistakes made in calculation of the carrying charges of various items.

2. After hearing both parties and perusing the entire amendment, viz., the amendment which is sought to be

made, it is clear so far as particulars of the claim in the original plaint in Col.1 is concerned, it is quite obvious that it is a typographical mistake and the invoice value mentioned is Rs.12,79,880.40 instead of Rs.21,79,880.40. The defendants have no objection, as can be seen from the reply filed by them, to allow this correction to be made.

3. So far as the other amendments are concerned, those are in respect of carrying charges which are said to be wrongly calculated and mentioned in the particulars of claim and in fact those are sought to be reduced as a result of which the total suit claim which was originally mentioned as Rs.2,73,50,781.46 would come, after amendment is allowed, to Rs.2,61,182.37.

It is to be noted that the trial has commenced and the plaintiffs' witness is in the witness box and the impugned errors became apparent in the course of cross-examination of the witness which resulted in filing of affidavit by the plaintiffs. The defendants objected to the same and hence this chamber summons was moved.

4. The learned counsel for the defendants sought to

rely upon the Proviso to Rule 17 of Order 6 of the Civil Procedure Code which stipulates that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before commencement of the trial. Therefore, the question arises whether there was due diligence while applying for amendment of the plaint. It was urged on behalf of the defendants that, earlier in 2001 one amendment was already carried out by the plaintiffs in the suit and, therefore, this amendment could have been sought for at that time itself and it is delayed after commencement of trial at which stage the present amendment is sought for.

5. In my considered view, while considering the question of due diligence, the nature of amendment sought for would be very much relevant in this proceeding. In fact, no prejudice would be caused to the defendants if the amendments are allowed, which in fact would reduce the alleged liability of the defendants in this case. Moreover, in view of the facts and circumstances, there are absolutely no malafides appeared to have involved in moving for amendments of the plaint at this stage. Therefore, taking into

consideration the facts and circumstances, I am inclined to allow the chamber summons subject to condition that the defendants shall be allowed to cross-examine the plaintiffs' witness on the grounds which are sought to be introduced by way of amendments. It is to be noted that, in fact, no further written statement would be required because no new material is sought to be introduced by way of amendment by the plaintiffs in the plaint and, therefore, in my considered view, permission to cross-examine the plaintiffs' witness on the points of amendments, would suffice the purpose.

6. In the result, the chamber summons is made absolute in terms of prayer clauses (a) & (b).

The amendments to be carried out within 10 days from the date of this order. Thereafter the matter shall be fixed for hearing and defendants shall be allowed to cross-examine the witness of the plaintiffs' who is already in the witness box, for cross-examination regarding amended plaint.

With these directions, the chamber summons stands disposed of with no order as to costs.

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